IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Civil Revision No.2911 of 2006
Date of Decision : 08.08.2007.

Ranjit Singh s/o Sh.Munshi Ram .....Petitioner

versus

State of Haryana and others .....Respondents

CORAM : HON'BLE MR.JUSTICE HEMANT GUPTA

Present: Shri V.K.Jain, Senior Advocate with
Shri Pritam Saini, Advocate for the petitioner.

Shri Sidharth Sarup, AAG, Haryana for respondent Nos.1 to 3.

Shri C.B.Goel, Advocate for respondent No.4.

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JUDGMENT

HEMANT GUPTA, J.

This order shall dispose of Civil Revision Nos.2911, 2912, 2913, 2914, 2915, 2960, 2961, 2962, 2963, 2964, 2965, 2966, 2967, 3001, 3002, 3003, 3004 and 3005 of 2006, as all the revisions arise out of similar facts and are directed against identical orders. But for the sake of convenience, the facts are taken from Civil Revision No.2911 of 2006.

The petitioner-herein, filed a Civil Suit for declaration with injunction as consequential relief, alleging himself to be owner of the suit property as proprietor in the year 1972. It is the case of the petitioner that about 1599 kanals 16 marlas of land was owned by the proprietors of the village which was described in the revenue record as *Shamilat Deh Hasab Hissa Muderja Shajra Nasab Malkan.* The proprietors deducted

proportionate area from the above said land. It is the case of the petitioner that this land was neither used for common purposes nor was owned by the Gram Panchayat. On the basis of said claim, a decree was passed by the learned Civil Court on 17.11.1972. The decree is based upon admission of the claim of the plaintiff in the written statement filed on behalf of the Sarpanch of the village. The order reads as under:-

> "In view of the admission of the claim of the plaintiff in the written statement of the Sarpanch of the Gram Panchayat, admitting the claim of the plaintiff, the suit of the plaintiff is decreed and a decree for declaration is passed in favour of the plaintiff to the effect that they are the landowners in possession of the land mentioned in para No.2 of the plaint. Consequently, relief of possession is also granted to the plaintiffs. A decree sheet be prepared and file be consigned to the record room. In view of the circumstances of the case, the parties are left to bear their own costs."
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> Announced.
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> 17.11.1972 Sd/-Sub Judge 1st Class, Karnal."

Thereafter, the Panchayat filed a Civil Suit challenging the said decree, which was dismissed on the statement of the Sarpanch of the Panchayat, on 6.9.1978. Still further, another suit was filed in the year 1988 challenging the aforesaid decree, which suit was dismissed in terms of Order 9 Rule 8 of the Code of Civil Procedure on 21.10.1994.

The Panchayat also sought eviction of the petitioner by initiating proceedings under Section 7 of the Punjab Village Common Lands

(Regulations) Act, 1961 (hereinafter referred to as the Act). The Assistant Collector, 1st Grade, Kurukshetra, dismissed the same vide order dated 29.5.1997, as the decree dated 17.11.1972 could only be set-aside by the Assistant Collector, 1st Grade. The appeal filed by the Gram Panchayat against the said order was dismissed by the Collector, Kurukshetra vide order dated 1.9.1997 and revision against the said order was also dismissed on 27.1.1998.

The Gram Panchayat also filed a suit challenging another decree dated 31.5.1988 declaring the proprietors of the village including the present petitioner to be owners of the suit land. The said suit was decreed by the learned trial Court on 25.4.1997. It was found by the learned trial Court that there is no iota of evidence on record to show that the defendants are declared themselves to be owners of the suit land on the basis of decree dated 17.11.1972. The relevant extract from the judgment dated 25.4.1997 reads as under:-

> "19. No doubt, Shri S.C.Sharma, learned counsel for the defendants has argued before me that in the year 1972 another decree was suffered by the Gram Panchayat Tatki in favour of the defendants, but it is not to be considered in this case because there is not an iota of evidence on the record to show that the defendants have declared themselves to be owners of the suit land on the basis of alleged decree dated 17.11.1972. Moreover, the defendants themselves have made statement on 2.8.1996 to set aside the impugned decree. In view of this discussion, it is held that the civil court decree dated 31.5.1988 is liable to be set-aside."

In view of the said findings, the suit was decreed by the learned trial Court. The appeal against the said judgment and decree was dismissed on 21.5.2002. In respect of the decree dated 17.11.1972, the matter was examined by the learned First Appellate Court in para No.21 of the judgment. The said para reads as under:-

> "21. Faced with this situation, Shri S.C.Sharma, learned counsel for the appellants contended that even if the impugned decree dated 31.5.1988 is set aside then also another decree was suffered by Gram Panchayat Tatki in favour of the defendants in the year 1972, but this submission made by the learned counsel for the appellants is again devoid of force because it is not the case of the defendants that they are owners of the suit land on the basis of alleged decree dated 17.11.1972. In addition to this, the defendants themselves had made statements on 2.8.1996 to set aside the impugned decree and hence, it is again reiterated that the Civil Court decree dated 31.5.1988 is liable to be set-aside."

The second appeal against the said judgment and decree came up for hearing before me on 16.9.2004 when an argument was raised by learned counsel for the petitioner that after setting aside of the decree in favour of the Gram Panchayat, the Civil Court cannot declare the Gram Panchayat to be the owner of the suit land as this jurisdiction vests with the Authority under the Punjab Village Common Land (Regulations) Act, 1961. The order passed by this Court reads as under:-

> "The defendants are in second appeal aggrieved against the judgment and decree passed by

the Courts below arising out of a suit for declaration filed by the plaintiff Gram Panchayat.

The plaintiff-Gram Panchayat has sought a declaration challenging the decree dated 31.5.1988 as one suffering from fraud and that such decree is null and void. The said decree was set aside, inter-alia, on the statement of the defendant-appellants that such decree be set-aside.

What is disputed in the present appeal is that after setting aside of the decree in favour of the defendant-appellants, the Civil Court has returned a finding of ownership in favour of the Gram Panchayat. It is submitted that the Civil Court cannot declare the Gram Panchayat to be the owner of the suit land as such jurisdiction vests with the authorities under the Punjab Village Common Lands (Regulations) Act, 1961.

After hearing the respective contentions of the parties, I am of the opinion that the judgment and decree to the extent that it declares the Gram Panchayat to be the owner of the suit land requires to be modified. After the decree in favour of the appellants was set-aside, it was for the aggrieved party to take recourse under the provisions of the Punjab Village Common Lands (Regulations) Act, 1961 (hereinafter referred to as the Act) in such manner as may be considered appropriate. The Gram Panchayat has the jurisdiction for eviction under Section 7 of the Act, whereas, if there is a dispute about the title, the appellants have a right to get the matter adjudicated under Section 13 of the Act.

In view of the above, judgment and decree passed by the Courts below is set aside to the extent

> that the Gram Panchayat is the owner of the suit land with liberty aforesaid.
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> The appeal stands disposed of accordingly."

The Gram Panchayat has filed another application under Section 7 of the Act on 29.7.2002. A copy of the said application is appended as Annexure P-3 with the revision petition. Reply to the said application was filed, but no reference has been made to decree dated 17.11.1972. The petitioner moved an application before the Assistant Collector, 1st Grade on 5.4.2006 for dismissal of the application filed by the Gram Panchayat under Section 7 of the Act, on the ground that an earlier application under Section 7 of the Act was dismissed by the Assistant Collector 1st Grade and the appeal and revision against that order were also dismissed. Reply to the said application was filed by the Panchayat on 17.4.2006 pointing out that earlier a statement was made by the counsel for the petitioner to adjourn the matter, keeping in view the pendency of the second appeal before this Court. Now, the second appeal has been decided, therefore, the application is liable to be dismissed. The said application was dismissed by the Assistant Collector, 1st Grade, vide order dated 21.4.2006, Annexure P-1. Thereafter, an order was passed by the Assistant Collector 1st Grade on 10.5.2006, Annexure P-2, which records that both the parties consented to the spot inspection, evidence and decision after hearing the arguments on the spot. The said order is reproduced as under:-

> "This case was put up today. The counsel for the parties are present. The case was listed for today for evidence of the applicant. But the counsel for both

> the parties consented to the spot inspection, evidence and decision after hearing the arguments on the spot. Therefore, the case file is ordered to be put up for spot inspection, argument and evidence on 25.5.06 at Government Primary School, Tatki, at 3. p.m. It may please be got noted from the learned counsel for both the parties."

On 15.5.2006, an application, Annexure P-17, was filed by the petitioner pointing out that no consent has been given by the counsel for the petitioner and, thus, sought recalling of the order dated 10.5.2006. Even before the said application could be decided by the Assistant Collector, 1st Grade, the present revision petition has been filed on 19.5.2006 challenging the orders dated 21.4.2006 and 10.5.2006, Annexures P-1 and P-2 respectively. Apart from challenging the orders Annexure P-1 and P-2, the petitioner has also claimed that application under Section 7 of the Act be transferred to another Court outside Haryana as it is alleged that the Government of Haryana has directed the Assistant Collector, 1st Grade, to evict the petitioner forcibly without taking into consideration the law.

Learned counsel for the petitioner has vehemently argued that the decree dated 17.11.1972 has been suffered by the Gram Panchayat. The challenge to the said decree, raised by the Gram Panchayat has remained unsuccessful twice before the Civil Court i.e. when the earlier suit was withdrawn as settled on 6.9.1978 and later when the suit was dismissed under Order 9 Rule 8 of the Code of Civil Procedure, on 21.10.1994. Since the said decree passed by the Civil Court has not been set-aside by any

Court of competent jurisdiction, therefore, the present proceedings initiated by the Gram Panchayat under Section 7 of the Act are barred on the principles of resjudicata. It is argued that the Civil Court was competent to entertain the said suit, as held by the Division Bench of this Court in a judgment reported as "***Bajinder Singh and another versus The Assistant Collector, 1st Grade, Guhla and others, 1983 P.L.J.-116"***. The said judgment has been affirmed by the Hon'ble Supreme Court of India in case ***"State of Haryana and others versus Karnal Co-op Farmers' Society Limited and others, 1993 P.L.J.-446***". Therefore, such decree passed by the Civil Court bars the Gram Panchayat to seek eviction of the petitioner under Section 7 of the Act.

On the other hand, learned counsel for the respondents has relied upon the judgment of the Hon'ble Supreme Court of India, reported as "***Inder Singh and another versus The Financial Commissioner, Punjab and others, 1997 (1) P.L.J.-52"*** and judgments of the Division Bench of this Court reported as ***"Gram Panchayat Surewala versus Commissioner, Ferozepur, 1998 (1) R.C.R. (Civil)-707"*** and ***"Rama Sarup and others versus State of Haryana and others, 2006 (4) R.C.R. (Civil)-350***", to contend that the previous decision on the application under Section 7 of the Act will not act as resjudicata as under Section 7 of the Act as such proceedings are of summary nature. It is contended that the decree suffered by the Sarpanch in the year 1972, is without any authority of the Panchayat, expressed by the resolution of the Panchayat and, therefore, such concession is not binding on the Panchayat. Reliance is placed on Rule 16 of the Punjab Village Common Lands (Regulation) Rules, 1964 and the

judgments reported as "***Balwant Singh versus Gram Sabha, Behrampur Bet and others, A.I.R.1972, P & H, page 309"*** and ***"Pat Ram versus Gram Sabha Digrota and others, 1986, Recent Revenue Reports-55".***

The first question which arises is, whether the validity of the decree dated 17.11.1972 can be examined now before the authorities under the Act or the judgment and decree passed by the Civil Court culminating with the decision of Regular Second Appeal on 16.9.2004, bars the petitioner to rely upon the said decree.

Vide Haryana Act No.2 of 1981, Section 13 was substituted in the Act so as to bar the jurisdiction of the Civil Court. Such bar to the jurisdiction of the Civil Court was made applicable with retrospective effect i.e. On 4th day of May, 1961. The Division Bench of this Court in *Bajinder Singh Singh's case* (supra) has set-aside that part of the amendment, which made it retrospective. The said judgment was affirmed by the Hon'ble Supreme Court of India in *Karnal Co-operative Farmers Society's case (supra)* as well.

While the jurisdiction of the Civil Court was barred in terms of Section 13 of the Act, the Assistant Collector 1st Grade, was empowered to decide the question of title under Section 13-A of the Act, introduced again by the Haryana Act No.2 of 1981. It is, thus, apparent that though the Civil Court was competent to decide the question of title, in the year 1972, but with the enactment of Haryana Act No.2 of 1981, the Civil Court ceased to have jurisdiction to decide such question. Therefore, the dismissal of the civil suit on 21.10.1994 is immaterial and ineffective qua any of the rights of the Gram Panchayat, as the Civil Court has no jurisdiction to examine the

question of title after enactment of Sections 13 and 13-A of the Act after the enactment of the Amendment Act No.2 of 1981. The decree dated 17.11.1972 has been passed on the basis of admission of the Sarpanch. Similar is the situation in respect of the suit filed by the Gram Panchayat on 6.9.1978. Such decrees are in contravention of Rule 16 of the Punjab Village Common Lands (Regulation) Rules, 1964, which reads as under:-

> "16. **Procedure where panchayat sues or is sued in its representative capacity:- [**Sections [15(2)(h)]:-
> (1) The panchayat shall by a resolution to be recorded in the proceeding book, appoint its Sarpanch or any other panch to contest any suit filed by or against the panchayat. The Sarpanch or panch so appointed shall file a copy of the resolution duly attested by the Sarpanch under the seal of the panchayat in the Court alongwith other documents.
> (2) The actual expenditure incurred in the defence of the case shall be chargeable to the funds of the panchayat.
> (3) The Sarpanch or panch so appointed shall not be competent to compound or admit claim of the party suing the panchayat without prior authorization by the panchayat by a resolution in writing passed in a meeting specifically called for the purpose [and prior approval of Block Development and Panchayat Officer concerned]. If any decree or order is passed by the Court as a result of fraud, misrepresentation, concealment of facts or collusion with the opposite party, the Sarpanch or Panch shall be personally liable for the loss caused to the panchayat."

Though the word prior approval of the Block Development and Panchayat Officer concerned, has been inserted w.e.f. 30.3.1999, but the fact remains that there is prohibition in the rules prohibiting the Sarpanch or Panch not to compound or admit the claim of the party suing the panchayat without prior approval of the Panchayat. Both the orders/decrees dated 17.11.1972 and 6.9.1978 are not even alleged to be after such resolution of the Panchayat. Therefore, such decrees/orders are not binding on the Panchayat in view of the judgment of this Court reported in *Balwant Singh's case (supra) and Pat Ram's case (supra).*

It may be noticed that the decree dated 17.11.1972 and that of dated 6.9.1978 were not made as part of defence by the petitioner in the civil suit challenging the decree dated 31.5.1988. It is so apparent from the relevant extract reproduced in the preceding paragraphs of this order. Since the petitioner has failed to raise any issue on the basis of aforesaid decree, in the subsequent civil suit wherein the challenge was made to another decree passed by the Civil Court, the petitioner cannot be permitted to raise an argument on the basis of decree dated 17.11.1972. The petitioner is estopped to raise such an argument.

It may be further noticed that in second appeal before this Court, decided on 16.9.2004 (Annexure P-14), the argument raised was that the Civil Court cannot declare the Gram Panchayat to be owner of the suit land, as such jurisdiction vests with the Authority under the Act. Having raised such an argument, which has been accepted by this Court, the petitioner cannot be permitted now to turn around and to allege that even the Authority under the Act has no jurisdiction to entertain the application

under Section 7 of the Act. The petitioner cannot be permitted to approbate and reprobate in the same breath. Once an argument is raised by the petitioner that question of title cannot be examined by the Civil Court, the petitioner cannot be permitted to allege that even the revenue Court cannot examine such question. The Gram Panchayat has now sought eviction assuming the Panchayat to be owner of the suit property. It is open to the petitioner to assert title in himself and if, prima-facie, the Assistant Collector 1st Grade finds substance in such plea, the Assistant Collector shall decide such question of title under Section 13-A of the Act.

The Hon'ble Supreme Court of India, in *Inder Singh's case* (supra) has found that the doctrine of resjudicata is not applicable to summary proceedings unless the Act specifically provides for applicability of the principles of resjudicata to such proceedings. It was held to the following effect:-

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> 3. Shri Ujagar Singh, learned senior counsel for the appellants contended that the view taken by the High Court is not correct in law. Since the proceedings before the authorities is of summary nature, the doctrine of res judicata has no application. The Act does not prescribe any principle of res judicata as such. The proceedings before the authorities are of summary nature. It would not be correct to apply the principle of res judicata. We find force in the contention. It is not in dispute that the order passed by the authorities is without any

elaborate trial like in a suit but in a summary manner. It is well settled law that the doctrine of res judicata envisaged in Section 11 of C.P.C. has no application to summary proceedings unless the statute expressly applies to such orders. The authorities are not civil Court nor the petition a plaint. No issues are framed nor tried as a civil suit. Under these circumstances, the Division Bench of the High Court was clearly in error to conclude that the earlier proceedings operate as res judicata.

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The said judgment was followed in *Gram Panchayat Surewala's case (supra)* and in *Rama Sarup's case (supra)*, wherein the matter was under the Act, wherein it was held to the following effect:-

"xx xx xx xx

23. The other contention raised by the learned counsel for the petitioners that the respondent Gram Panchayat has no right or title over the disputed land is also without any merit as the land in the revenue record has been described as Shamilat Deh and in terms of Section 4 (1) of the 1961 Act, it vests in the Gram Panchayat. Another contention that has been raised by the learned counsel for the petitioners is with regard to the petition under Section 7 being barred. This is moreso in respect of Ram Sarup's case (CWP No.19211 of 2004) and Darya Singh's case (CWP No.244 of 2005) in view of the earlier petitions being dismissed. In this respect, it may be noticed that

> the Hon'ble Supreme Court in ***Inder Singh v. Financial Commissioner, Punjab, 1997 (1) PLJ-52***, held that the doctrine of res judicata is not applicable to summary proceedings unless the statute expressly applies to such order. It was held that the authorities under the Pepsu Tenancy and Agricultural Land Act are not civil Courts and nor the petition a plaint. No issues were framed nor tried as a civil suit and the orders passed by the authorities without any elaborate trial like any civil suit, but in a summary manner would not make the principle of res judicata applicable. Therefore, merely because an earlier petition filed by the Gram Panchayat before the authorities under the 1961 Act has been dismissed would in the circumstances of the case not bar the filing of another petition by the Gram Panchayat. Therefore, this objection of the petitioners is also without any basis.
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> xx xx xx xx"

In view of the discussion above, it is apparent that the judgment and decrees dated 7.11.1972, 6.9.1978 and 21.10.1994 does not permit the petitioner to assert title in himself as the subsequent suit filed by the Panchayat challenging the decree dated 31.5.1988 was decreed holding such decree to be ineffective qua the rights of the Panchayat. Not only that, this Court in Regular Second Appeal against such decree, has permitted the Panchayat to establish its title before the authorities under the Act. Such order was passed on the basis of an argument raised by the petitioner. Therefore, the petitioner cannot now turn around and to allege that the

earlier decree has created bar for the Panchayat to assert title in itself. Similarly, though the previous proceedings under Section 7 of the Act have been dismissed, but such proceedings are summary in nature and, therefore, does not operate as res judicata.

The petitioner has sought transfer of the proceedings outside the State of Haryana, on the basis of newspaper report, Annexure P-18. It is alleged that the Government of Haryana has directed the Assistant Collector 1st Grade, to evict the petitioner without following the due process of law. However, a perusal of the newspaper report would show that, in fact, the report relates to eviction of the unauthorized occupants of the Gram Panchayat, Berthala, wherein an order of eviction was affirmed in favour of the Gram Panchayat by the Financial Commissioner. Since, an order of eviction has been passed in the aforesaid case, the possession was taken in lawful manner. No direction has been issued to the Assistant Collector, 1st Grade, by the Government of Haryana to dispossess the petitioner forcibly. The inferences drawn by the petitioner are wholly conjectural and based on his own apprehensions, which are not legal or factual.

The order Annexure P-1 dated 21.4.2006 is the order whereby an application for dismissal of the application under Section 7 of the Act was declined. For the reasons mentioned in detail above, I do not find any illegality or irregularity in the order passed which may warrant interference of this Court in exercise of its revisional jurisdiction.

So far as the order Annexure P-2 is concerned, the petitioner has moved an application on 15.5.2006, Annexure P-17. Since no order has been passed on the said application by the Assistant Collector 1st Grade, therefore, I do not wish to examine the legality of the said order as the order is purportedly passed on consent and that the petitioner is, in fact, disputing the consent of his counsel by moving an application on 15.5.2006.

In view of the above, I do not find any illegality or irregularity in the order dated 21.4.2006, Annexure P-1, nor I find any case for transfer of the proceedings outside the State of Haryana. Therefore, the present revision petitions are dismissed with liberty to the petitioner to proceed with his application, Annexure P-17, dated 15.5.2006, in accordance with law.

August 08, 2007 **(HEMANT GUPTA)**
*mohinder **JUDGE**